

§ 3500.3

24 CFR Ch. XX (4–1–08 Edition)

transaction is not a secondary market transaction (see § 3500.5(b)(7)).

Title company means any institution, or its duly authorized agent, that is qualified to issue title insurance.

[61 FR 13233, Mar. 26, 1996, as amended at 61 FR 29252, June 7, 1996; 61 FR 58475, Nov. 15, 1996; 62 FR 20088, Apr. 24, 1997]

EFFECTIVE DATE NOTE: At 61 FR 29252, June 7, 1996, § 3500.2(b) was amended by adding a definition of “managerial employee”, effective Oct. 7, 1996. At 61 FR 51782, Oct. 4, 1996, the effective date was delayed until further notice.

§ 3500.3 Questions or suggestions from public and copies of public guidance documents.

Any questions or suggestions from the public regarding RESPA, or requests for copies of HUD Public Guidance Documents, should be directed to the Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–8000, rather than to HUD field offices. Legal questions may be directed to the Assistant General Counsel, GSE/RESPA Division, at this address.

§ 3500.4 Reliance upon rule, regulation or interpretation by HUD.

(a) *Rule, regulation or interpretation.* (1) For purposes of sections 19 (a) and (b) of RESPA (12 U.S.C. 2617 (a) and (b)) only the following constitute a rule, regulation or interpretation of the Secretary:

(i) All provisions, including appendices, of this part. Any other document referred to in this part is not incorporated in this part unless it is specifically set out in this part;

(ii) Any other document that is published in the FEDERAL REGISTER by the Secretary and states that it is an “interpretation,” “interpretive rule,” “commentary,” or a “statement of policy” for purposes of section 19(a) of RESPA. Such documents will be prepared by HUD staff and counsel. Such documents may be revoked or amended by a subsequent document published in the FEDERAL REGISTER by the Secretary.

(2) A “rule, regulation, or interpretation thereof by the Secretary” for purposes of section 19(b) of RESPA (12

U.S.C. 2617(b)) shall not include the special information booklet prescribed by the Secretary or any other statement or issuance, whether oral or written, by an officer or representative of the Department of Housing and Urban Development (HUD), letter or memorandum by the Secretary, General Counsel, any Assistant Secretary or other officer or employee of HUD, preamble to a regulation or other issuance of HUD, Public Guidance Document, report to Congress, pleading, affidavit or other document in litigation, pamphlet, handbook, guide, telegraphic communication, explanation, instructions to forms, speech or other material of any nature which is not specifically included in paragraph (a)(1) of this section.

(b) *Unofficial interpretations; staff discretion.* In response to requests for interpretation of matters not adequately covered by this part or by an official interpretation issued under paragraph (a)(1)(ii) of this section, unofficial staff interpretations may be provided at the discretion of HUD staff or counsel. Written requests for such interpretations should be directed to the address indicated in § 3500.3. Such interpretations provide no protection under section 19(b) of RESPA (12 U.S.C. 2617(b)). Ordinarily, staff or counsel will not issue unofficial interpretations on matters adequately covered by this part or by official interpretations or commentaries issued under paragraph (a)(1)(ii) of this section.

(c) All informal counsel’s opinions and staff interpretations issued before November 2, 1992, were withdrawn as of that date. Courts and administrative agencies, however, may use previous opinions to determine the validity of conduct under the previous Regulation X.

§ 3500.5 Coverage of RESPA.

(a) *Applicability.* RESPA and this part apply to all federally related mortgage loans, except for the exemptions provided in paragraph (b) of this section.

(b) *Exemptions.* (1) A loan on property of 25 acres or more.

(2) *Business purpose loans.* An extension of credit primarily for a business, commercial, or agricultural purpose, as defined by Regulation Z, 12 CFR

226.3(a)(1). Persons may rely on Regulation Z in determining whether the exemption applies.

(3) *Temporary financing.* Temporary financing, such as a construction loan. The exemption for temporary financing does not apply to a loan made to finance construction of 1- to 4-family residential property if the loan is used as, or may be converted to, permanent financing by the same lender or is used to finance transfer of title to the first user. If a lender issues a commitment for permanent financing, with or without conditions, the loan is covered by this part. Any construction loan for new or rehabilitated 1- to 4-family residential property, other than a loan to a *bona fide* builder (a person who regularly constructs 1- to 4-family residential structures for sale or lease), is subject to this part if its term is for two years or more. A "bridge loan" or "swing loan" in which a lender takes a security interest in otherwise covered 1- to 4-family residential property is not covered by RESPA and this part.

(4) *Vacant land.* Any loan secured by vacant or unimproved property, unless within two years from the date of the settlement of the loan, a structure or a manufactured home will be constructed or placed on the real property using the loan proceeds. If a loan for a structure or manufactured home to be placed on vacant or unimproved property will be secured by a lien on that property, the transaction is covered by this part.

(5) *Assumption without lender approval.* Any assumption in which the lender does not have the right expressly to approve a subsequent person as the borrower on an existing federally related mortgage loan. Any assumption in which the lender's permission is both required and obtained is covered by RESPA and this part, whether or not the lender charges a fee for the assumption.

(6) *Loan conversions.* Any conversion of a federally related mortgage loan to different terms that are consistent with provisions of the original mortgage instrument, as long as a new note is not required, even if the lender charges an additional fee for the conversion.

(7) *Secondary market transactions.* A *bona fide* transfer of a loan obligation in the secondary market is not covered by RESPA and this part, except as set forth in section 6 of RESPA (12 U.S.C. 2605) and § 3500.21. In determining what constitutes a *bona fide* transfer, HUD will consider the real source of funding and the real interest of the funding lender. Mortgage broker transactions that are table-funded are not secondary market transactions. Neither the creation of a dealer loan or dealer consumer credit contract, nor the first assignment of such loan or contract to a lender, is a secondary market transaction (see § 3500.2.)

[61 FR 13233, Mar. 26, 1996, as amended at 61 FR 58475, Nov. 15, 1996]

§ 3500.6 Special information booklet at time of loan application.

(a) *Lender to provide special information booklet.* Subject to the exceptions set forth in this paragraph, the lender shall provide a copy of the special information booklet to a person from whom the lender receives, or for whom the lender prepares, a written application for a federally related mortgage loan. When two or more persons apply together for a loan, the lender is in compliance if the lender provides a copy of the booklet to one of the persons applying.

(1) The lender shall provide the special information booklet by delivering it or placing it in the mail to the applicant not later than three business days (as that term is defined in § 3500.2) after the application is received or prepared. However, if the lender denies the borrower's application for credit before the end of the three-business-day period, then the lender need not provide the booklet to the borrower. If a borrower uses a mortgage broker, the mortgage broker shall distribute the special information booklet and the lender need not do so. The intent of this provision is that the applicant receive the special information booklet at the earliest possible date.

(2) In the case of a federally related mortgage loan involving an open-ended credit plan, as defined in § 226.2(a)(20) of Regulation Z (12 CFR), a lender or